

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Kenneth C. Bussey Trust and  
Caston Family LP  
c/o Garry M. Brown, Esq.  
Gresham Savage Nolan & Tilden  
550 East Hospitality Lane, Suite 300  
San Bernardino, California 92408

Recorded in Official Records,  
County of San Bernardino  
Doc#: 2007-0117633  
2/23/2007 2:15 PM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**COVENANT TO RESTRICT USE OF PROPERTY  
ENVIRONMENTAL RESTRICTION**

**(Re: San Bernardino County APNs 0136-041-10 and 0136-051-54,  
Hanford Foundry Company property,  
Department of Toxic Substances Control site code number 401251)**

RECORDING REQUESTED BY:  
Kenneth C. Bussey Trust and  
Caston Family LP  
354 South Allen Street  
San Bernardino, CA 92408

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630  
Attention: Greg Holmes, Unit Chief  
Southern California Cleanup Operations  
Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## COVENANT TO RESTRICT USE OF PROPERTY

### ENVIRONMENTAL RESTRICTION

(Re: San Bernardino County APNs 0136-041-10 and 0136-051-54,  
Hanford Foundry Company property,  
Department of Toxic Substances Control site code number 401251

This Covenant and Agreement ("Covenant") is made by and between the Bussey Family 1995 Living Trust also know as the Kenneth C. Bussey Trust, hereafter referred to as the Kenneth C. Bussey Trust, and Caston Family LP (the "Covenantors"), the current owner of property situated in San Bernardino, County of San Bernardino, State of California, described in section 1.01 below and depicted in Exhibit "A" (including Exhibit A-1 - APN 0136-041-10, Exhibit A-2 – APN 0136-051-54, and Exhibit A-3 - Both APNs shown in relation to each other and the bounding streets and Railway Right of Way), hereafter referred to as the "Property" and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The

Covenantors and Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5(a)(1)(c) that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

## ARTICLE I STATEMENT OF FACTS

1.01. The Property, totaling approximately 10.58 acres is more particularly depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the City of San Bernardino, County of San Bernardino, State of California, in the area bounded by Rialto Avenue (formerly known as First Street) on the north, Sierra Way (formerly known as "A" Street) to the east, Arrowhead Avenue (formerly known as "C" Street) to the west, and on the south by the Atchison, Topeka, and Santa Fe railroad tracks right of way. Further, the Property includes all of the (former) streets and alleyways within the boundaries described above, including but not limited to those portions of Boyd, Mountain View, and Pershing Streets as such existed north of the Atchison, Topeka, and Santa Fe railroad tracks right of way and south of Rialto Avenue; such avenues, streets, and alleyways lying within the described perimeter above all having been properly abandoned and/or vacated by the City of San Bernardino and recorded as such in the San Bernardino County Records. The Property is also generally described as San Bernardino County Assessor's Parcel No. 0136-051-54 (the eastern half of the Property) and San Bernardino County Assessor's Parcel No. 0136-041-10 (the western half of the Property).

1.02. As detailed in the Final Site Characterization Report, which included a human health Risk Assessment, as approved by the Department on November 22, 2006, portions of the surface and subsurface soils within 10 feet of the surface of the Property contain hazardous substances, as defined in Health and Safety Code section 25316, including metals, polychlorinated biphenyls (PCBs), and semi-volatile organic constituents (SVOCs). The Risk Assessment concluded that there was no

unacceptable excess cancer risk or non-cancer hazard to the indoor worker, outdoor worker, or the construction worker.

However, the Risk Assessment did indicate that the estimated cancer risk, above background levels, for the hypothetical resident was  $2.6E-4$  (approximately 3 people in 10,000); this is above the generally accepted excess cancer risk level of  $1E-6$  (one in one million) for a resident. The unacceptable excess cancer risk level was mainly due (96%) to four chemicals in soil (0 to 10 ft below ground surface (bgs)): arsenic (64%), Aroclor 1260 (22%), Aroclor 1254 (6%), and benzo(a)pyrene (4%). Aroclors are polychlorinated biphenyls (PCBs).

The estimated hazard index for non-cancer effects the hypothetical resident may experience was 18; this is above the accepted threshold of 1. Six chemicals of concern contribute 95% of the hazard index from twenty-six possible chemicals of potential concern. These six chemicals in soil (0 to 10 ft bgs) and the individual percentages that they contribute toward the total hazard index are as follows: antimony (4%), iron (50%), manganese (3%), molybdenum (2%), nickel (3%), and total chromium (33%). The other twenty chemicals each added less than 2% to the total hazard index and in total added 5%.

Groundwater at the Property is found at about 50 feet below ground surface. Contaminants in the groundwater above maximum contaminant levels include arsenic and antimony. Arsenic (As) showed a maximum concentration of 0.031 mg/L in one of the on-site monitoring wells. Antimony showed a maximum concentration of 0.034 mg/L in one of the on-site monitoring wells, but recent samples have been non-detect for antimony. The California drinking water standard is set at a maximum contaminant level of 0.010 mg/L for arsenic and 0.006 mg/L for antimony. The Risk Assessment found that the contamination in the near surface soils and vadose zone did not show a completed exposure pathway to surface waters, and it assumed that there was no completed pathway to the deep aquifers used for drinking water, although communication to the aquifers has been found in other areas in the groundwater basin. Insufficient data are available for Department to conclude that this contamination does

not present an acceptable threat to human health and safety from the groundwater.

Based on the Risk Assessment the Department concluded that use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department further concluded that the Property, as is, if limited to commercial and industrial, parks, open space use and when used in compliance with the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment.

## ARTICLE II

### DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III  
GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed.

This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5(a)(1)(c) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. This Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances, and Leases). The written notice shall include the name and mailing

address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Owner hereby covenants for himself and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's cost in administering the Covenant.

#### ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management:

- (a) No activities that will disturb the soil at the surface or below ground surface (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the

Property without a Soil Management Plan approved by the Department.

- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any ground disturbance activity, including but not limited to those related to building, filling, grading, mining, excavating, repairs, and landscaping in the Property.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops); or fiber crops, e.g. cotton
- (b) Extraction of groundwater for purposes other than site remediation or construction dewatering.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

## ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil or criminal actions.

ARTICLE VI  
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02. Termination or Modification. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03. Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII  
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Bernardino within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this

Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Kenneth C. Bussey Trust and Caston Family LP  
c/o Bernard Howard  
354 South Allen Street,  
San Bernardino, CA 92408

And

To Department: Mr. Greg Holmes, Unit Chief  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, CA 90630

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval by January 15<sup>th</sup> of each year. The annual report, must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.) If

violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

7 08 Trustee's and Signatory's Authority Statements.

I, Kenneth C. Bussey, Jr., certify that the Trust known as the Bussey Family 1995 Living Trust, also known as the Kenneth C. Bussey Trust is the current owner of an undivided 50 percent interest in the Property that is the subject of this Land Use Covenant. I further certify that I am the Trustee for the Trust under Trust Agreement dated July 19, 1995.

I, Irene V. Caston, certify that the Caston Family LP is the current owner of an undivided 50 percent interest in the Property that is the subject of this Land Use Covenant and that I am the general partner of the Caston Family LP and am fully authorized to bind all members of the Caston Family LP.

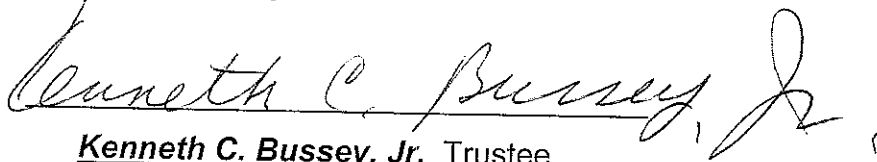
Together, we, Kenneth C. Bussey, Jr. and Irene V. Caston are fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind all owners of the property and the Property itself. Further, if this Covenant is held invalid or unenforceable by the Department because we as the signatories lacked the authority to execute the Covenant, Kenneth C. Bussey, Jr. and Irene V. Caston and the Covenantors will be jointly and severally liable to the Department for all its costs incurred in procuring a replacement covenant from the proper owner with the authority to bind the Property to the terms set forth in this Covenant.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantors: Bussey Family 1995 Living Trust

(also know as the Kenneth C. Bussey Trust), and  
Caston Family LP

By:



Title:

**Kenneth C. Bussey, Jr.** Trustee

Date:

2-8-07

By:



Title:

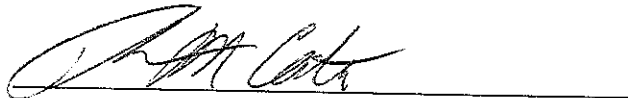
**Irene V. Caston**, General Partner, for Caston Family LP

Date:

2/8/07

Department of Toxic Substances Control

By:



Title:

**Thomas M. Cota**, Chief,

Southern California Cleanup Operations Branch Cypress Office

Date:

2/16/07

ACKNOWLEDGMENT

STATE OF CALIFORNIA

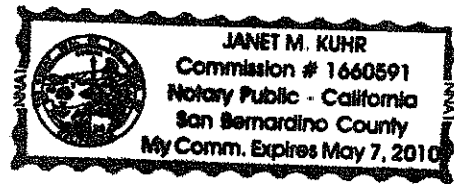
COUNTY OF

San Bernardino ss.

On this 8th day of February in the year 2007, before me, Janet M. Kuhr Notary Public Notary Public in and for said state, personally appeared Kenneth C. Bussey, Jr. personally known to me (or proved to me on the basis of satisfactory evidence), to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Janet M. Kuhr



ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

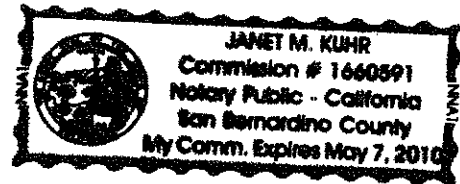
San Bernardino

SS.

On this 8<sup>th</sup> day of February, in the year 2007, before me, Janet M. Kuhr ~~Notary Public~~ Notary Public in and for said state, personally appeared Irene V. Casten, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person ☒ whose name ☒ is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity ☒, and that by his/her/their signature ☒ on the instrument the person ☒, or the entity upon behalf of which the person ☒ acted, executed the instrument.

WITNESS my hand and official seal

Janet M. Kuhr



## ACKNOWLEDGMENT

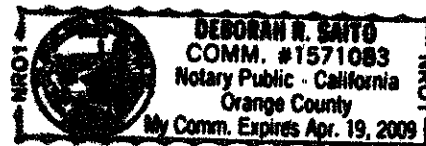
STATE OF CALIFORNIA

COUNTY OF Orange

On this 16<sup>th</sup> day of February, in the year 2007, before me, Deborah R. Saito, Notary Public, a Notary Public in and for said state, personally appeared Thomas M. Cota, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature (s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Alvon A. Smith



**Exhibit A**

**Exhibit A-1 -- APN 0136-041-10**

**Exhibit A-2 -- APN 0136-051-54**

**Exhibit A-3 Both APNs shown in relation to each other**



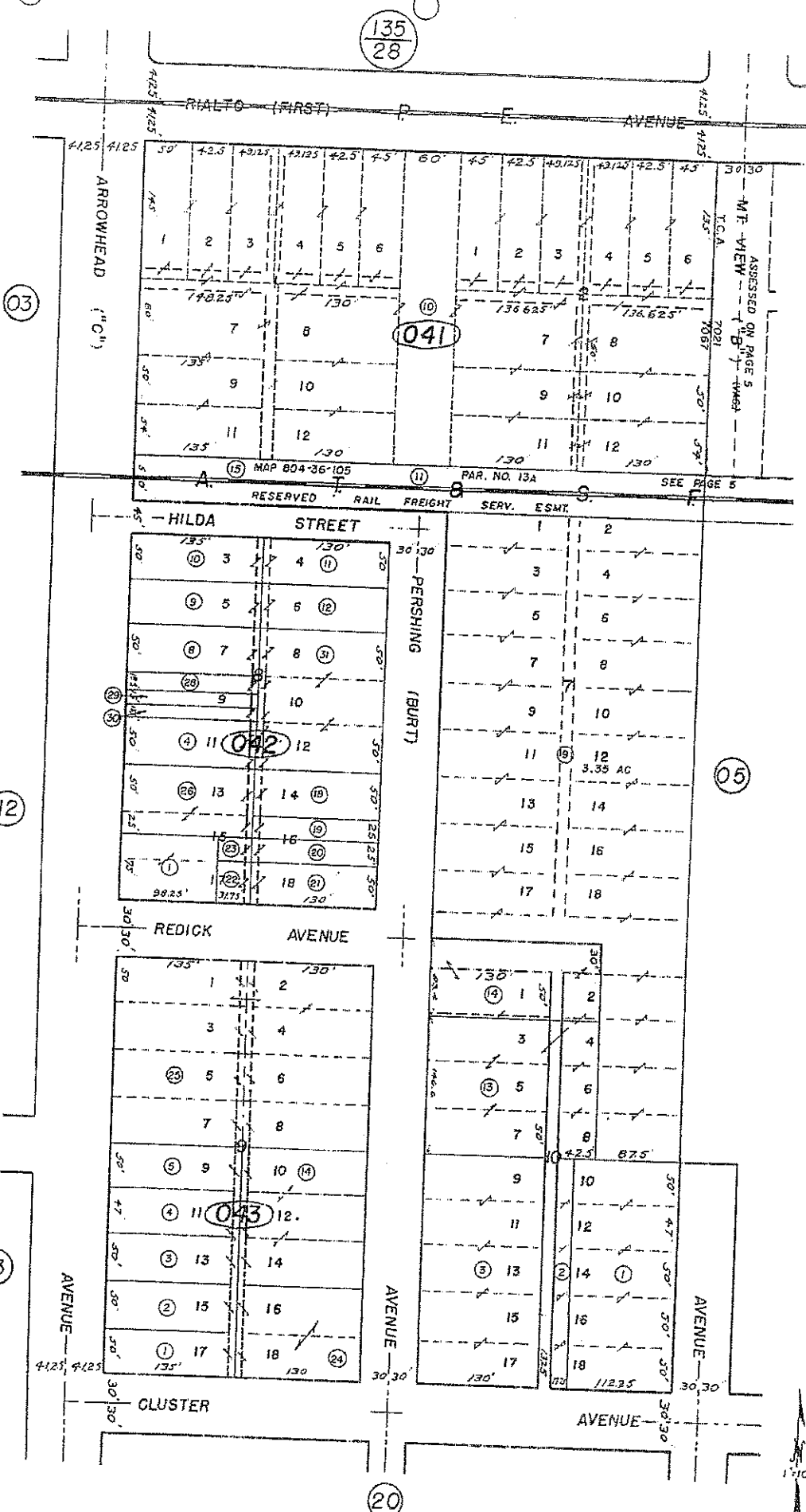


EXHIBIT A-1 -- APN 0136-041-10

FOR J. W. Waters Sub.  
M.B. 7/38

San Bernardino City  
Tax Rate Area  
7021, 7067

136-04



Note - Assessors Block  
& Lot Numbers Shown  
in Circles.

Assessors Map  
Book 136 Page 04  
San Bernardino County

REVISED  
9/27/04  
3-28-78  
1/23/83  
7/11/00  
SS

April 1949

135  
28

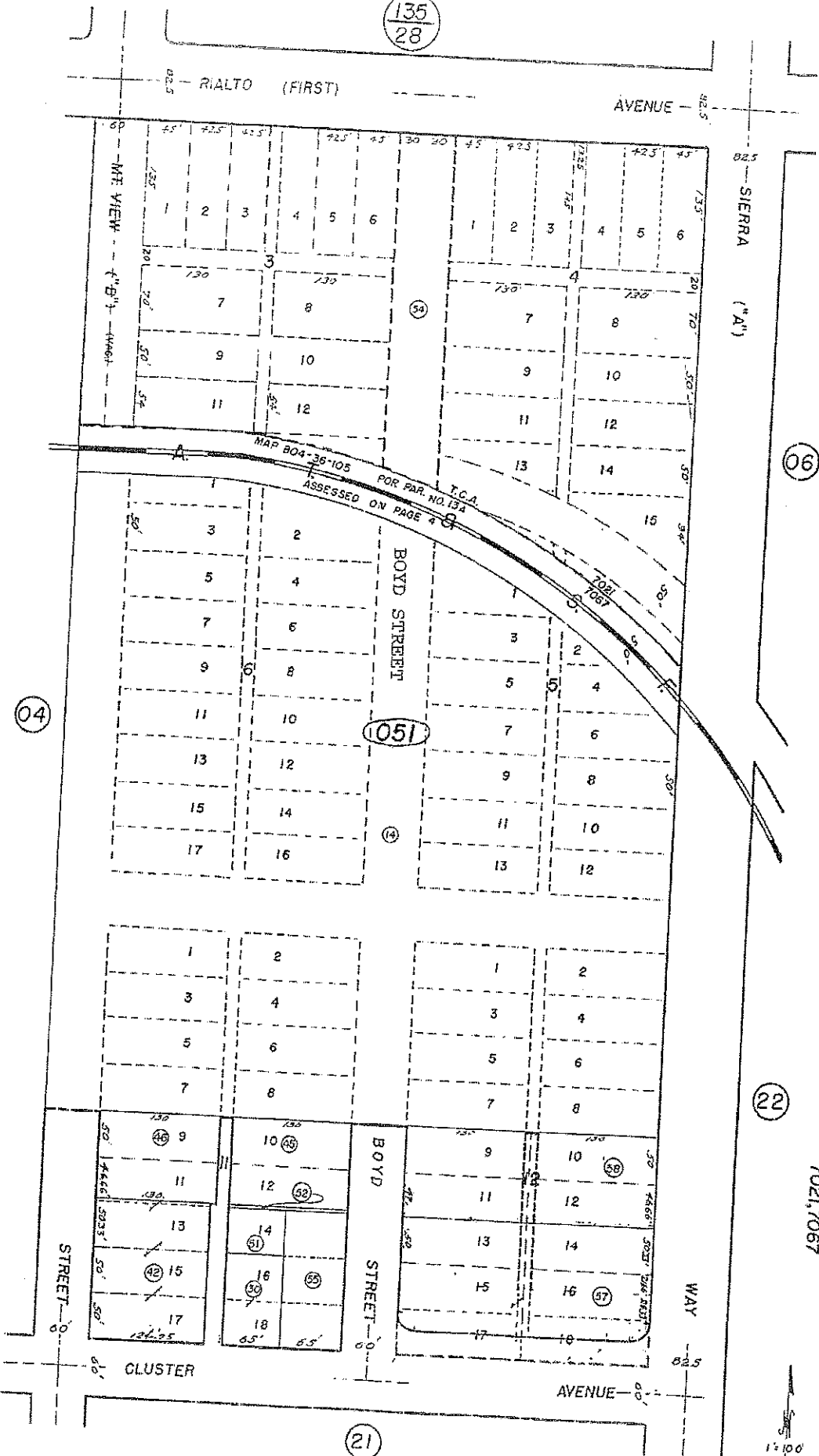


EXHIBIT A-2 -- APN 0136-051-54

For J.W. Waters' Sub.  
M.B. 7/38

San Bernardino City  
Tax Rate Area  
7021, 7067

136-05

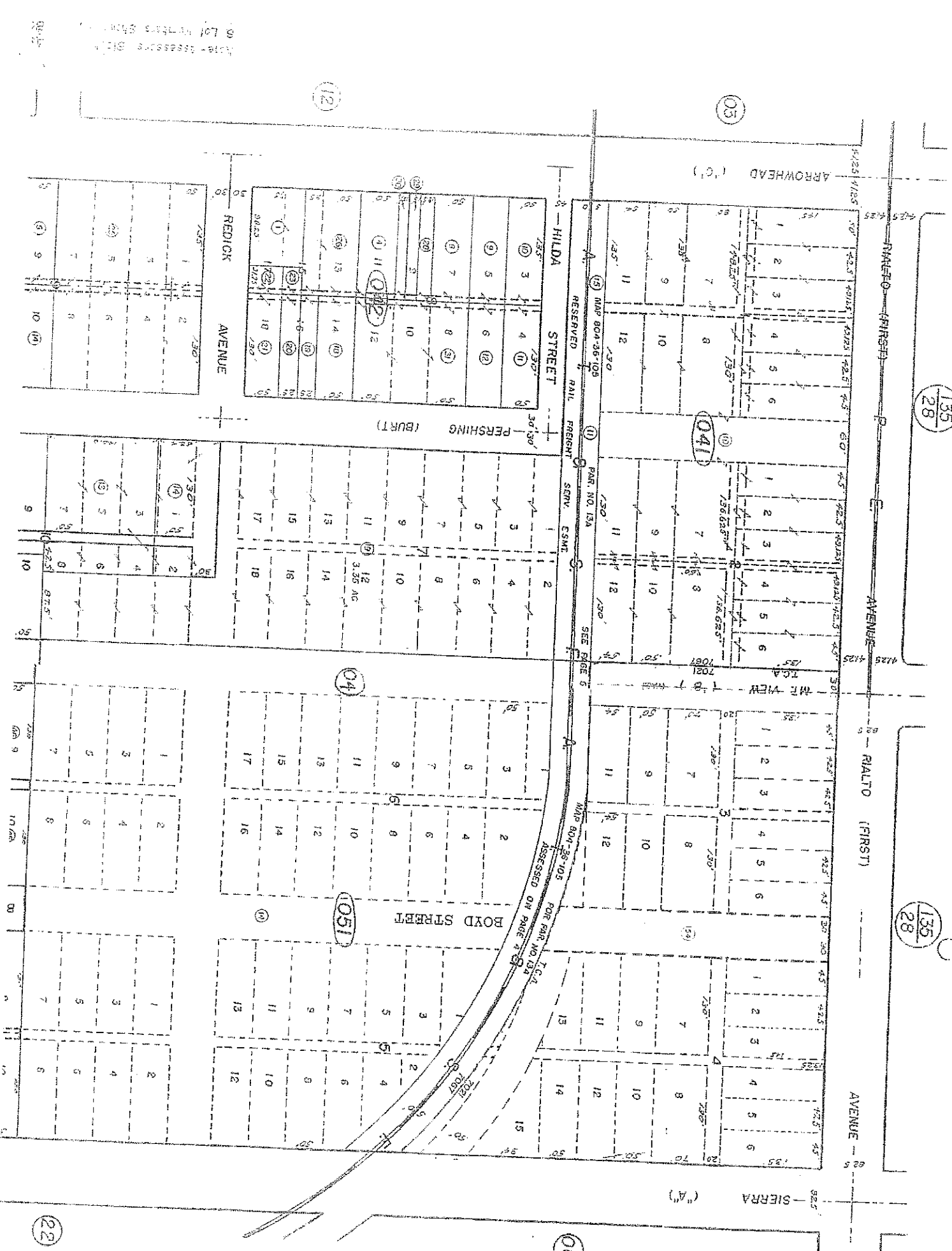
Assessor's Map  
Book 136 Page 05  
San Bernardino County

REVISED  
8/5/81  
4/22/87  
3/14/88  
1/23/93  
NP  
CC  
SS

EXHIBIT A-3 -- APN 0136-041-10 and 0136-051-54

135  
28

135  
28



For J.W. Waters Sub  
M.B. 7/38